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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re S.S., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

F057031

(Super. Ct. No. JJD060510)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Judge.

Kristin Cobery, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, and Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Vartabedian, A.P.J., Levy, J., and Dawson, J.

On December 18, 2008, the court readjudged appellant, S.S., a ward of the court after it sustained allegations charging him with possession of a dirk or dagger (Pen. Code, § 12020, subd. (a)(4)). On appeal, appellant contends one of his conditions of probation is vague and overbroad.¹ We will find merit to this contention and amend the condition at issue. In all other respects, we will affirm.

FACTS

On July 18, 2008, at 1:15 a.m. a police officer on patrol saw a car with only one headlight on approaching the intersection of Divisadero and Tulare Streets in Visalia. The officer made a U-turn and saw several people pushing the car. The people fled as the officer approached them. After officers set up a perimeter, appellant was apprehended running behind a garage. A search of appellant uncovered a sharp object, a baggie containing 16 Vicodin pills, a red bandanna, and \$225 in cash.

On August 25, 2008, a subsequent petition was filed charging appellant with possession of a dirk or dagger.

On December 9, 2008, following a contested jurisdictional hearing, the court found the allegations in the petition true.

On January 16, 2009, the court denied appellant's motion to reduce his offense to a misdemeanor. The court then placed appellant on probation on certain terms and conditions and released him to the custody of his parents. Probation condition No. 7 required that appellant "[n]ot use, possess or be under the influence of any alcoholic beverage or illegal or intoxicating substance or possess any associated paraphernalia."

¹ Appellant also contended that the juvenile erred in setting his maximum term of confinement. This issue is moot because pursuant to appellate counsel's request, on June 9, 2009, the court issued an order striking appellant's maximum term of confinement.

DISCUSSION

Appellant contends the phrase “intoxicating substances” in condition No. 7 is vague and overbroad because he could violate that probation condition by using medicine prescribed by a doctor. Respondent contends condition No. 7 is not overbroad or vague because appellant has a history of drug abuse and there is no evidence in the record that he needs “psychotropic medication.” We agree with appellant.

“Trial courts have broad discretion to set conditions of probation in order to ‘foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.’ [Citations.] If it serves these dual purposes, a probation condition may impinge upon a constitutional right otherwise enjoyed by the probationer, who is ‘not entitled to the same degree of constitutional protection as other citizens.’ [Citation.]

“However, the trial court’s discretion in setting the conditions of probation is not unbounded. A term of probation is invalid if it: ‘“(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.”’ [Citation.] Conversely, ‘... a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.’ [Citation.]” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624.)

“A probation condition is subject to the ‘void for vagueness’ doctrine, and thus ‘must be sufficiently precise for the probationer to know what is required of him’ [Citations.]” (*People v. Lopez, supra*, 66 Cal.App.4th at p. 630.)

Here, the condition at issue is overbroad and vague because it prohibits appellant from taking medicines prescribed by a doctor that can have an intoxicating effect. Respondent’s contention that the condition is not vague or overbroad is not persuasive because it ignores that fact that appellant may need to take medicine with an intoxicating effect for a legitimate medical purpose. Accordingly, we conclude that the condition at issue is overbroad and we will amend it in the manner suggested by appellant.

DISPOSITION

Probation condition 7 is amended to read as follows: “Not use, possess or be under the influence of any alcoholic beverage or illegal substances or drugs or possess any associated paraphernalia.” As modified, the judgment is affirmed.